

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 **BEESON, TAYER & BODINE, APC**
4 483 Ninth Street, 2nd Floor
5 Oakland, CA 94607-4051
6 Telephone: (510) 625-9700
7 Facsimile: (510) 625-8275
8 Email: vsoroushian@beesontayer.com

9 Attorneys for Plaintiff
10 *AFSCME LOCAL 101*

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**
15 **AT SAN JOSE**

16 SAN JOSE POLICE OFFICERS'
17 ASSOCIATION, et al.

18 Plaintiff,

19 v.

20 CITY OF SAN JOSE, BOARD OF
21 ADMINISTRATION FOR POLICE AND FIRE
22 DEPARTMENT RETIREMENT PLAN OF
23 CITY OF SAN JOSE, and DOES 1-10,
24 inclusive,

25 Defendants.

26 AND RELATED CROSS-COMPLAINT AND
27 CONSOLIDATED ACTIONS
28

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]

ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2

**AFSCME'S [PROPOSED] STATEMENT OF
DECISION**

1 On July 22 to 26, 2013, this Court held a consolidated bench trial in the above-captioned
2 matters. Teague P. Paterson and Vishtasp M. Soroushian appeared for Plaintiff and Cross-Defendant
3 American Federation of State, County and Municipal Employees, Local 101 (“AFSCME” or
4 “Plaintiff”). Arthur A. Hartinger, Geoffrey Spellberg, and Linda M. Ross appeared for Defendant
5 and Cross-Complainant City of San José, California, and Debra Figone, in her official capacity as
6 San José City Manager. Harvey L. Leiderman and Kerry K. Galusha appeared for Necessary Party in
7 Interest Board of Administration for the Federated City Employees’ Retirement Plan.

8 For the reasons stated in the San José Police Officers’ (“SJPOA”) [Proposed] Statement of
9 Decision (“POA Decision”)¹ and for those further reasons set forth below in this Statement of
10 Decision, the Court finds in favor of AFSCME. The Court further exercises its discretion to decline
11 to issue the declaratory relief sought by the City of San Jose on its federal cross-claim and/or finds
12 for AFSCME on the City’s federal cross-claim.

13 **FACTUAL BACKGROUND**

14 The Court incorporates the factual background set forth in the POA Decision with the
15 following facts and conclusions of law pertinent to AFSCME’s claims.

16 AFSCME’s First Amended Complaint (“FAC”) named Defendants the City of San José and
17 Debra Figone, in her official capacity as City Manager of the City (collectively “City” or
18 “Defendant”). It also named the Board of Administration (“Board”) for the Federated City
19 Employees Retirement Plan (“Plan”) as Necessary Party in Interest. AFSCME seeks declaratory and
20 injunctive relief, a writ of mandate, and damages from the City. It does not seek redress from the
21 Board.

22 AFSCME’s FAC alleged that San José’s “Sustainable Retirement Benefits and Compensation
23 Act” (“Measure B”) violated its members’ vested pension and retiree health rights and their
24 reasonable expectations under the following sections of the California Constitution: Contracts (Cal.

25 ¹ The POA Decision addresses the constitutionality of the Sustainable Retirement Benefits and Compensation Act with
26 respect to San José’s Police and Fire Department Retirement Plan (“P&F Plan”). For purposes of this AFSCME
27 Decision, the Court’s discussion in the POA Decision also applies with respect to the Federated City Employees’
28 Retirement Plan (“Plan”), unless stated otherwise. The City’s Municipal Code sections governing the Federated Plan are
set out in chapters 3.16, 3.20, 3.24, and 3.28. (San José Municipal Code, § 3.28.010.) Therefore, for purposes of this
AFSCME Decision, any discussion of municipal code sections pertaining to the P&F Plan in the POA decision applies to
the applicable code provisions in the Federated Plan.

1 Const. art. I, § 9), Takings (Cal. Const. art. I, § 19), Due Process (Cal. Const. art. I, § 7), and Right to
2 Petition Clauses (Cal. Const. art. I, §§ 2, 3); the Pension Protection Act (Cal. Const. art. XVI, § 17);
3 and Bill of Attainder Clause (Cal. Const. art. I, § 9). AFSCME further alleged that under the
4 doctrines of promissory and equitable estoppel, the City should be estopped from implementing
5 Measure B and denying AFSCME members and retirees their earned and promised benefits. The
6 Court dismissed with prejudice AFSCME's Bill of Attainder cause of action pursuant to AFSCME's
7 proposed stipulation to withdraw it at trial. (Tr. 391:26-28; 392:1-14, 26-28; 393:1.)

8 During the trial, AFSCME also presented witnesses Jeffrey Rhoads, an active City employee,
9 and Margaret Martinez, a recent retiree. Both testified as to the reliance induced by the City's
10 representations of the retirement benefits afforded under the Federated Plan as well as the detriment
11 they incurred by relying on those representations, as well as the fact that by entering City
12 employment they forfeited coverage under the Federal Social Security program.

13 Furthermore, AFSCME business representative, Dr. Charles Allen, testified regarding the
14 retirement benefit bargaining history between AFSCME and the City. Finally, AFSCME presented
15 expert witness Daniel Doonan, a Labor Economist, who testified on various subjects, including the
16 effect of a declining payroll on the City's obligations towards paying retirement plan unfunded
17 accrued actuarial liabilities ("UAAL").

18 As was the case with the City's Police and Fire Department Retirement Plan, the City offered
19 no evidence that the Federated Plan was insolvent or that Measure B was promulgated to address any
20 such insolvency. The City also conceded that Measure B provided no "commensurate benefit" to the
21 impairment of vested property rights caused by Measure B, and, indeed, the City failed to produce
22 evidence of any benefit to any particular employees or retirees at trial.

23 DISCUSSION

24 For the reasons set forth in the P&F Decision, and also the reasons set forth below, AFSCME
25 met its burden of demonstrating that Measure B makes unlawful changes to the pension and retiree
26 health rights of current and retired San José public employees, including current and former
27 AFSCME members.
28

1 First, the Court agrees with AFSCME that “upon acceptance of public employment [an
2 AFSCME member] acquired a vested right to a pension based on the system then in effect” and “on
3 terms substantially equivalent to those then offered by the [the City].” (*Carmon v. Alvord* (1982) 31
4 Cal.3d 318, 325; *Miller v. State of California* (1977) 18 Cal.3d 808, 817.) Furthermore, AFSCME
5 members earned a vested property right to any benefits created after they commenced work, since
6 enhancements to vested pension benefits become part of the protected contract right; such
7 enhancements have “no bearing upon the reasonableness [sic] of the detriment so imposed.” (*Betts v.*
8 *Bd. of Admin.* (1978) 21 Cal.3d 859, 867.) Since the City did not provide convincing evidence of an
9 express or clear and unequivocal waiver of this established right that would preclude vesting of any
10 of the benefits at issue in this case, it failed to overcome the presumption that the benefits at issue in
11 this case constituted vested property rights. (*Allen v. Bd. of Admin.* (1983) 34 Cal.3d 114, 124-25;
12 *Bellus v. City of Eureka* (1968) 69 Cal.2d 336, 348-352.) The Court further notes that federal law
13 requires public employers whose employees who are not enrolled in Social Security to provide a
14 guaranteed benefit as an alternative to social security (*see* 26 U.S.C., § 3121(b)(7)(F); 42 U.S.C., §
15 418(b)(4); and regulations promulgated thereunder); this further supports the conclusion that its
16 employee’s pension rights are vested.

17 Furthermore, and importantly, the City failed to provide evidence that Measure B provided
18 any sort of “comparable new advantage” for the detriment it imposed. (*See Allen v. City of Long*
19 *Beach* (1955) 45 Cal.2d 128, 131.) In fact, at trial the City admitted that Measure B provides no
20 additional or commensurate benefit to offset the disadvantages imposed by Measure B on active
21 employees and retirees. (*See* Tr. 24:6-17.) Rather, the City averred that--for purposes of establishing
22 a comparable new advantage--the appropriate comparison was not necessarily “between Measure B
23 and what was there before; the relative benefit could be alternatives within Measure B,” including,
24 for example avoiding layoffs (Tr. 25:2-15.) The Court acknowledged, and the City admitted, that
25 there is no authority which supports this theory (Tr. 128:12-20), nor has the City provided authority
26 to support this contention. The Court therefore finds that the City’s theory is unsupportable under
27 established precedent to which the Court is bound to apply.
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1 Therefore, the City failed to prove that its contract impairment was matched by a
2 commensurate benefit. For this reason, in and of itself, Measure B violates the California
3 Constitution's Contracts Clause.

4 Below, the Court discusses other issues unique to AFSCME's FAC and finds in AFSCME's
5 favor on all such issues.

6 **I. SECTION 1511-A: DISCONTINUATION OF SUPPLEMENTAL BENEFIT**
7 **RETIREE BENEFIT RESERVE ("SRBR") IS AN UNCONSTITUTIONAL**
8 **TAKING, IMPAIRMENT OF CONTRACT, AND VIOLATES DUE PROCESS, AS**
9 **GUARANTEED BY THE CALIFORNIA CONSTITUTION.**

10 Plaintiffs are correct that the City's discretion with regard to distributions is distinct from
11 having discretion to abolish the SRBR altogether. The City presented no evidence rebutting
12 AFSCME's contention that members' vested in their right to the SRBR upon commencing
13 employment with the City.

14 The Court agrees that AFSCME members had a constitutionally protected property interest in
15 the assets of the SRBR, and the City was required to administer the SRBR solely for the benefit of
16 such members. (San José Municipal Code ("SJMC" or "Code"), §§ 3.28.340(E)(1), (E)(2); *see also*
17 Cal. Const. art. 16, § 17; SJMC, § 3.28.070(B)(4).) The evidence demonstrates that while the City
18 used the assets from the elimination of the SRBR for its own benefit, the transfer of the former SRBR
19 funds into the general account did not impact the retirement contribution rate of individual employees
20 or retirees, nor provide any equivalent advantage. Importantly, on its face, Measure B does not
21 require that the City use the plan assets from the discontinued SRBR to benefit its employees.

22 Based on the evidence presented, the Court further concludes that the City utilized the SRBR
23 trust fund *res* for its own benefit, even though the trust fund itself includes contributions directly
24 received from the wages of active, retired and deferred-vested system members. Such system
25 members therefore have an equitable interest in the proceeds of the SRBR, as provided under the
26 Pension Protection Act ("PPA"), Section 17 of Article 16 of the Constitution, as well as the common
27 law of Trusts. For this reason, the Court also concludes, as discussed below, that the elimination of
28 the SRBR Trust constituted an unconstitutional taking.

1 Simply, the evidence established that the City absorbed the *rest* of the SRBR trust into the
2 retirement system to its own advantage and to offset what the Court finds were the City's general
3 obligation to fund the pension systems. The fact that the City used the SRBR trust fund to reduce its
4 pension liabilities and, consequently, its annual ARC payments, with no reduction associated with
5 employee contribution obligations, was not disputed at trial. (*See, e.g.*, Tr. 936:22-23, 28; 937:1, 16-
6 21.)

7
8 As a matter of law, the Court finds that the City failed to exercise their obligations in good
9 faith and caused the Retirement Board to breach its fiduciary duties owed to the beneficiaries of the
10 SRBR Trust.

11 **II. SECTION 1512-A CONSTITUTES AN UNCONSTITUTIONAL TAKING,**
12 **IMPAIRMENT OF CONTRACT, AND VIOLATES DUE PROCESS, AS**
13 **GUARANTEED BY THE CALIFORNIA CONSTITUTION.**

14 Pursuant to the San José Municipal Code, members of the Federated System who satisfy
15 certain conditions related to the pension plan's service and disability retirement provisions are
16 entitled to also receive retiree medical and dental benefits. (SJMC Sec. 3.28.1950, 3.28.2000.) For
17 the same reasons that the Federated System establishes a vested benefit with respect to pension
18 benefits, the Court finds that the system's retiree health provisions, also duly set forth in the Code and
19 employing terms indicating vesting and accrual of benefits, similarly establish a vested benefit upon
20 commencement of employment.

21 The Court's finding is predicated in part on the facts that the retiree health benefit is
22 actuarially funded by both City and employee contributions; vests upon accrual of years of service;
23 provides a defined benefit of the lowest cost plan of the employee; provides a survivorship benefit
24 with respect to spouses and dependents of the vested employee; and is funded through a reserved
25 retirement trust established for that purpose and administered by the Federated Board, an independent
26 fiduciary. Employees who enter city service do so under the terms of the Municipal Code and the
27 benefits provided thereunder at the time of commencing employment. (*See Retired Employees Assn.*
28 *of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171; *see also Thorning v. Hollister*
School Dist. (1992) 11 Cal.App.4th 1598, 1606, 1607.)

1 The Court's conclusions are further supported by the fact that the City has explicitly
2 communicated to employees and retirees the vested nature of the defined retiree health benefit, and
3 AFSCME members relied on this representation. (Exh. 361; *see* Tr. 327:5-10.) The Court finds this
4 sufficient evidence to conclude a vested benefit has been conferred and earned by AFSCME
5 members.

6 Having determined that the benefits provided under the Federated System are vested, the
7 Court next turns to the extent to which Measure B's Retiree Health provision, section 1512-A,
8 imposes on these vested benefits.

9 The Court finds that subdivision (b) of section 1512-A, which by its terms indicates that
10 retiree health benefits may be amended or eliminated, is inconsistent with the vested nature of the
11 benefit. The Court finds that the provisions, on its face, attempts to "unvest" the vested rights
12 described above. It is therefore unconstitutional as an impairment of contract (Cal. Const. Art. I, § 9)
13 and as an unconstitutional taking (Cal. Const. Art. I, § 19), and violates due process Cal. Const. Art.
14 I, § 7).

15 The Court also finds that Subdivision (a) of section 1512-A is unconstitutional as it alters the
16 settled and established obligation of employees and the City with respect to funding of the retiree
17 health benefits. The contracts clause protects not only the benefits provided, but also the method of
18 funding such benefits when the funding method is specifically defined or otherwise apportioned, in
19 the same manner as it protected pension benefits. (*See Bellus v. City of Eureka* (1968) 69 Cal.2d 336,
20 350; *England v. City of Long Beach* (1945) 27 Cal.2d 343, 347; *Allen v. City of Long Beach* (1955)
21 45 Cal.2d 128, 131).)

22 Here, the Code and City Charter provide for equal contributions by employees and the City,
23 and specify different ratios with respect to retiree health and dental benefits. Measure B upsets this
24 vested component of the retiree health benefit by re-defining these funding obligations. Section
25 1512-A(a) provides that employees must pay "at least" half of the cost of the benefit including both
26 the normal cost and the retiree health plan's unfunded liabilities. By its terms, the provision
27 eliminates an obligation on the part of the City to contribute towards the benefit. The Court finds that
28 the City's obligation to, in essence, match employee contributions under a 1:1 ratio, which has been

1 set forth in the Municipal Code, is a component of the retiree health “contract” and is protected from
2 impairment by the Constitution.

3 Similarly, the Court concludes that the obligation imposed on employees to pay for “at least”
4 half of the accrued actuarial liability of the retiree health benefit constitutes an impairment of
5 contract. There has been no such requirement in the past; rather, the Court finds that employee
6 contributions have been made on an actuarially computed ten-year normal cost basis.

7 The Court further finds that the imposition of such a cost-sharing requirement with respect to
8 retiree health unfunded liabilities upsets the vested rights of employees with respect to the funding of
9 their retiree health benefit. Testimony from both City’s and Plaintiffs’ witnesses established that a
10 large portion of the retiree health plan’s unfunded liabilities are associated with early retirements and
11 reduced workforce. Currently, there is one retiree for every 0.83 employees of the City. As a result,
12 Section 1512-A(b) imposes on Federated System members a new and onerous obligation to pay for
13 not only their own retiree benefits, but also the benefits of a large number of retirees and deferred-
14 vested members.

15 With respect to Measure B’s Retiree Health provisions, the Court now turns to subdivision (c)
16 of section 1512-A, which amends the City Charter to define the retiree health benefit as the City’s
17 lowest cost plan available to active employees. In June 2012, after the passage of Measure B, the
18 City adopted a High Deductible Health Plan (“HDHP”), which increased employee deductibles from
19 \$0 to \$1,500 for single and \$3,000 for family coverage (Tr. 861-62). Although the City asserted that
20 the adoption of the HDHP was not a creature of Measure B, the City did not testify consistently in
21 this regard. Rather, the Court discerns that the provisions of Measure B that seek to “unvest” retiree
22 health, combined with the insertion of the “low cost health plan” provision in the City Charter were
23 the authority under which the City detrimentally redesigned its retiree health benefit applicable to
24 retirees and retiring employees. As described above, the defined nature of the retiree health benefit
25 and the method of funding and administering the benefit in the same manner as a pension benefit
26 establish the vested nature of the benefit, which is preserved as the benefit at the time they commence
27 employment with the City. The Court therefore finds that subdivision (c) of 1512-A constitutes an
28 unconstitutional impairment of contract.

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2 **III. THE CITY'S EMPLOYEES AND RETIREES DETRIMENTALLY RELIED**
3 **UPON THE CITY'S PROMISE OF PRE-MEASURE B RETIREMENT BENEFITS**
4 **AND THE CITY IS THUS ESTOPPED FROM ENFORCING MEASURE B.**

5 The City intended to induce reliance on its promise of its pre-Measure B retirement package
6 for the purposes of attracting talent to its workforce. The City conceded that as other California
7 jurisdictions offered increased employee and retirement benefits, San José maintained comparable
8 benefits. (Tr. 521:4-13, 23-27; 522:2-6.) Employees, in addition, forewent participation in the federal
9 social security old age, survivors, disability insurance program (i.e. "Social Security"), which
10 constitutes a detriment sufficient to establish estoppel on the part of the City with respect to the
11 pension benefits it provides its employee in lieu of Social Security.

12 It is apparent that AFSCME members incurred major detriment by accepting City service with
13 the promise of a certain level of retirement benefits and foregoing the opportunity to contribute
14 towards and receive Social Security benefits upon retiring. For example, the City reminded its
15 members through its retirement handbooks that they would "not receive Social Security credit for
16 their City service." (*See, e.g.*, Exh. 329, p. 10 (AFSCME003894); *see also* Exhs. 365, 366 (Statement
17 Concerning Your Employment in a Job Not Covered by Social Security).)

18 So serious is the missed opportunity to collect Social Security benefits upon retirement that
19 the federal government requires public employers not participating in the program to inform
20 employees of the fact that their positions are not covered by Social Security; employees are required
21 to provide a signature acknowledging their understanding of the fact. (42 U.S.C., § 1320b-13(d).)

22 The reasonable inference is that San José provided the pension benefits in order to induce
23 employment and continued retention of employees. The City is therefore estopped from reducing
24 such benefits pursuant to Measure B. This inference is supported by individual AFSCME members
25 testimony that they relied on the City's promised retirement package in not working in the public
26 sector and foregoing a Social Security benefit or by staying in the employ of the City as long as they
27 did.

28 The Court further finds that, in addition to finding that the vested nature of Federated
System's retiree health benefit prohibits the detriments imposed by Measure B with respect to retiree

1 health, that the City is also estopped from reducing or eliminating the retiree health benefit with
2 respect to current employees and retirees. For example, Martinez testified that she was promised free
3 healthcare after retiring as long as she completed fifteen years of service and stayed in the Kaiser co-
4 pay plan. (See Tr. 329:22-26; 334: 17-19.) Rhoads was told that if he worked for thirty years, he
5 would earn 75% of his final salary based upon the 2.5% accumulation formula and guaranteed retiree
6 health benefits after fifteen years of service. (Tr. 103:25-28; 104:1-10, 22-28; 105:1-11.) He relied
7 on these representations in taking a full-time position with the City. In doing so, he opted not to
8 apply for a private sector position at Altera which paid more and to which his ex-wife continued to
9 encourage him to apply because he looked forward to the City's retirement benefits. (Tr. 106:1-21.)
10 He also passed on an opportunity to apply for a position with AT&T that the company's Assistant
11 Director² recommended that he apply. At that point, he was close to reaching fifteen years of service
12 and did not want to lose his opportunity to earn retiree health benefits. (Tr. 106:24-28; 107:1-6, 15-
13 27.)

14 Because City employees and retirees such as Martinez and Rhoads suffered such detriment by
15 relying on the City's representations of promised benefits, the City is estopped from enforcing
16 Measure B.

17 CONCLUSION

18 Accordingly, the Court rules as follows. On AFSCME's First Amended Complaint for
19 Declaratory and Injunctive Relief and Petition for Writ of Mandate:

20 1. AFSCME shall have judgment against the City on the First Cause of Action for
21 violation of the California Constitution's Contracts Clause;

22 2. AFSCME shall have judgment against the City on the Third Cause of Action for
23 violation of the California Constitutional Takings Clause;

24 3. AFSCME shall have judgment against the City on the Fourth Cause of Action for
25 violation of the California Constitutional Due Process Clause;

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28 ² The Court presumes that such a statement from an Assistant Director is reliable and indicates that the position was
available to Rhoads. (*See In re Stevens* (1922) 59 Cal.App. 251, 256-57.)

1 4. AFSCME shall have judgment against the City on the Fifth Cause of Action for
2 violation of the California Pension Protection Act;

3 5. AFSCME shall have judgment against the City on the Sixth Cause of Action for
4 violation of the California Constitution's Right to Petition;

5 6. AFSCME shall have judgment against the City on the Eighth Cause of Action for
6 Promissory Estoppel and Equitable Estoppel;

7 It is therefore ordered and adjudged that:

8 1. Measure B cannot be applied to public employees working for the City on or before
9 June 5, 2012;

10 2. the City was and is required to provide public employees with the retirement benefits
11 and Plan in place when they began working for the City, as well as any enhancements made during
12 their service with the City;

13 3. the City is required to provide the retirement benefits delineated in the MOA;

14 4. and, by the above-described actions and omissions, the City violated its obligations.

15 On the City of San Jose's Cross-Complaint for Declaratory Relief:

16 1. The request for declaratory relief is DENIED and/or the Court finds that AFSCME
17 shall have judgment entered in its favor on the City's cross-complaint for the same reasons outlined
18 above.

19 Within 10 days after the filing of this Statement of Decision, AFSCME shall file a
20 proposed injunction that prohibits enforcement of Measure B in accordance with this order.

21 IT IS SO ORDERED.
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Hon. Patricia M. Lucas
Superior Court Judge

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

AFSCME'S [PROPOSED] STATEMENT OF DECISION

☐ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☐ **By Personally Delivering** a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ **By Messenger Service** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.

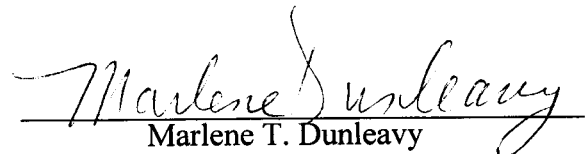
☐ **By UPS Overnight Delivery** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ **By Facsimile Transmission** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, September 10, 2013.


Marlene T. Dunleavy

SERVICE LIST

Greg McLean Adam, Esq.
Jonathan Yank, Esq.
Gonzalo C. Martinez, Esq.
Amber L. West, Esq.
CARROLL, BURDICK & McDONOUGH LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

*Attorneys for Plaintiff, SAN JOSE POLICE
OFFICERS' ASSOCIATION (Santa Clara
Superior Court Case No. 112CV225926)*

Arthur A. Hartinger, Esq.
Geoffrey Spellberg, Esq.
Linda M. Ross, Esq.
Jennifer L. Nock, Esq.
Michael C. Hughes, Esq.
MEYERS, NAVE, RIBACK, SILVER &
WILSON
555 12th Street, Suite 1500
Oakland, CA 94607

*Attorneys for Defendants, THE CITY OF SAN
JOSE AND DEBRA FIGONE*

John McBride, Esq.
Christopher E. Platten, Esq.
Mark S. Renner, Esq.
WYLIE, McBRIDE, PLATTEN & RENNER
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125

*Attorneys for Plaintiffs/Petitioners, ROBERT
SAPIEN, MARY McCARTHY, THANH HO,
RANDY SEKANY AND KEN HEREDIA (Santa
Clara Superior Court Case No. 112-CV-225928)*

AND

*Plaintiffs/Petitioners, JOHN MUKHAR, DALE
DAPP, JAMES ATKINS, WILLIAM
BUFFINGTON AND KIRK PENNINGTON (Santa
Clara Superior Court Case No. 112-CV-226574)*

AND

*Plaintiffs/Petitioners, TERESA HARRIS, JON
REGER, MOSES SERRANO (Santa Clara
Superior Court Case No. 112-CV-226570)*

Harvey L. Leiderman, Esq.
REED SMITH, LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

*Attorneys for Defendant, CITY OF SAN JOSE,
BOARD OF ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT RETIREMENT
PLAN OF CITY OF SAN JOSE (Santa Clara
Superior Court Case No. 112CV225926)*

AND

*Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1961 SAN JOSE
POLICE AND FIRE DEPARTMENT
RETIREMENT PLAN (Santa Clara Superior
Court Case No. 112CV225928)*

AND

*Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1975
FEDERATED CITY EMPLOYEES'
RETIREMENT PLAN (Santa Clara Superior
Court Case Nos. 112CV226570 and
112CV22574)*

AND

*Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE FEDERATED
CITY EMPLOYEES RETIREMENT PLAN
(Santa Clara Superior Court Case No.
112CV227864)*

1 Stephen H. Silver, Esq.
2 Richard A. Levine, Esq.
3 Jacob A. Kalinski, Esq.
4 SILVER, HADDEN, SILVER, WEXLER &
5 LEVINE
6 1428 Second Street, Suite 200
7 Santa Monica, CA 90401-2367
8
9
10
11
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14
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16
17
18
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*Attorneys for Plaintiffs, SAN JOSE RETIRED
EMPLOYEES ASSOCIATION, HOWARD E.
FLEMING, DONALD S. MACRAE, FRANCES J.
OLSON, GARY J. RICHERT and ROSALINDA
NAVARRO (Santa Clara Superior Court Case No.
112CV233660)*